

IN THE COURT OF CRIMINAL APPEALS OF TENNESSEE
AT NASHVILLE

Assigned on Briefs August 8, 2006

STATE OF TENNESSEE v. DERRELL E. BENDER

Appeal from the Criminal Court for Davidson County
No. 2002-D-2429 Steve Dozier, Judge

No. M2005-02065-CCA-R3-CD - Filed January 5, 2007

The defendant, Derrell E. Bender, appeals from the Davidson County Criminal Court's denial of his motion for a reduction of his ten-year, guilty-pleaded sentence for voluntary manslaughter. We affirm the criminal court's order of dismissal.

Tenn. R. App. P. 3; Judgment of the Criminal Court is Affirmed.

JAMES CURWOOD WITT, JR., J., delivered the opinion of the court, in which NORMA MCGEE OGLE and J.C. McLIN, JJ., joined.

Dwight E. Scott, Nashville, Tennessee, for the Appellant, Derrell E. Bender.

Robert E. Cooper, Jr., Attorney General & Reporter; Blind Akrawi, Assistant Attorney General; Victor S. Johnson, III, District Attorney General; and Pamela Sue Anderson, Assistant District Attorney General, for the Appellee, State of Tennessee.

OPINION

The defendant was charged with a 2002 first degree, premeditated murder. In his guilty plea petition, he agreed to plead guilty to voluntary manslaughter, a Class C felony, and an out-of-range ten-year sentence to be served as a career offender in the Department of Correction at 60 percent. The criminal court entered a judgment to this effect on December 12, 2003. On March 2, 2004, the defendant filed a motion for reduction of his sentence. *See* Tenn. R. Crim. P. 35(b). On April 1, 2004, the court entered an order denying the Rule 35(b) motion. Apparently, the defendant appealed the order. *See State v. Derrell Bender*, No. M2004-01175-CCA-R3-CO (Tenn. Crim. App., Nashville, Feb. 8, 2005) (adjudicating the defendant's appeal from the denial of Rule 35 relief).¹ On appeal, this court held that the criminal court had misread the Rule 35(b) motion to be a request for probation, and we determined that the motion sought "rather a sentence of three to six years which would make [the defendant] statutorily eligible for probation." *Id.*, slip op. at 2. Thus, this court

¹The record in the current appeal does not reflect the taking of the appeal.

reversed and remanded the case to the criminal court for consideration of the defendant's claim to a reduction of the term of his sentence. *Id.*, slip op. at 3.

On remand, the trial court conducted a hearing on April 26, 2005, in which the defendant testified that he wanted the court to reduce his sentence to a term of a minimum of three years and a maximum of six years and, thereafter, to consider probation. He testified he had received no disciplinary infractions in prison, had held a prison job, and had completed training in small engine repair. He further testified that he was receiving training in commercial cleaning and was taking a correspondence course in career development. He also testified that his daughter had been born recently and that his younger sister was seriously ill. He admitted that he understood the terms of his guilty plea and that he had originally faced a potential sentence of life imprisonment for first degree murder. He agreed that the plea was "a good idea at the time."

On April 28, 2005, the trial court entered an order denying the Rule 35(b) motion, "[b]ased upon the nature of the offense and the defendant's prior record." The court adverted to the defendant's admission that he understood the terms of his plea agreement and to the facts of the case, which were apparently reflected in the discovery materials contained in the conviction case file. Although these materials are not contained in the appellate record before us, the trial court mentioned that the defendant shot the victim twice, "once in the mouth and once in the back." The court reasoned, "There is no valid reason for this Court to not have him hold up his end of the bargained-for exchange."

Tennessee Rule of Criminal Procedure 35(b) provides:

The trial court may reduce a sentence upon application filed within 120 days after the date the sentence is imposed or probation is revoked. No extensions shall be allowed on the time limitation. No other actions shall toll the running of this time limitation. A motion for reduction of sentence under this rule may be denied by the trial judge without a hearing. If the application is denied, the defendant may appeal but the defendant shall not be entitled to release on bond unless the defendant is already under bond. If the sentence is modified, the state may appeal as otherwise provided by law. A modification can only be as to any sentence the court could have originally imposed.

Tenn. R. Crim. P. 35(b). The trial court's Rule 35(b) review is guided by whether a reduction of sentence is proper "in the interest of justice." *Id.*, Advisory Commission Comments; *see also State v. Hodges*, 815 S.W.2d 151, 154 (Tenn. 1991). When a sentence results from the terms of a plea agreement, however, the court should decline to modify the sentence unless "unforeseen[] post-sentencing developments" compel relief. *State v. McDonald*, 893 S.W.2d 945, 947 (Tenn. Crim. App. 1994). The appellate court reviews the trial court's Rule 35(b) determination for abuse of discretion. *State v. Irick*, 861 S.W.2d 375, 376 (Tenn. Crim. App. 1993).

The record before us evinces neither an abuse of discretion nor a basis for extended analysis. We discern no unforeseen post-trial developments that implicate the interests of justice or support Rule 35(b) relief.

Therefore, the order of the criminal court is affirmed.

JAMES CURWOOD WITT, JR., JUDGE